

From: Knittel, Janette
To: DUVAL Rich
Cc: Valdez, Heather; McArthur, Lisa
Subject: RE: more on CAA exemption for ORU-2
Date: Tuesday, June 26, 2018 4:22:01 PM

Hi Rich,

I just had a whirlwind conversation with Heather and Dave about Heather's assessment. The final conclusion is that what Dave explained below still stands which I believe aligns with the path you were on already. Please let me know if you have any questions. The next step is for you to send to EPA for review the revised permit/standalone language and DEQ's responses to EPA's comments. It's already been almost a month since the clock started ticking on the 45 day public comment period. I understand that you've been pulled off ChemWaste for other work but obviously EPA would appreciate getting those materials very soon so we have time to resolve any uncertainties and avoid 271.19.

Thanks,
Janette

From: Knittel, Janette
Sent: Monday, June 25, 2018 9:13 AM
To: DUVAL Rich <rich.duval@state.or.us>
Cc: Valdez, Heather <Valdez.Heather@epa.gov>
Subject: RE: more on CAA exemption for ORU-2

Hi Rich,

Heather reached out to our colleagues for their input on her assessment in my original email below. Here is Dave Bartus' response. Please call me after you have read this.

-Janette

From Dave B.:

"Here is a pretty good guidance document from Region 4 that has helpful information regarding the questions below. There are some more documents being developed by the PIT team that I'm working on – they are not final, so I'll share them when the workgroup makes a determination that they are releasable.

https://trainex.org/web_courses/subpart_x/TopicSearch%20pdf%20files/pdf%20docs%20ABC/Final%20Overlap%20Provisions.pdf

There are two key points that I'd like to make regarding the questions below. First, the RCRA Subpart BB rules do not include an exemption – rather, they include an election. For Subpart BB, facility owners/operators can elect to demonstrate compliance with the recordkeeping requirements of either Subpart BB or relevant provisions of the regulations at 40 CFR Part 60, Part 61, or Part 63. More specifically, the guidance cited above states:

Paragraph §264.1064 (m) in the recordkeeping requirements states that the owner or operator "...may elect to determine compliance with this subpart either by documentation pursuant to §264.1064 of this subpart [i.e., Subpart BB], or by documentation of compliance with the regulations at 40 CFR Part 60, Part 61, or Part 63 pursuant to the relevant provisions of the regulations at 40 CFR Part 60, Part 61, or Part 63." The corresponding Part 265 language is the same. The objective of the amendment was to eliminate any owner or operator burden caused by regulatory overlap.

The key point here is that the facility owner/operator is still obligated to demonstrate compliance with RCRA Subpart BB, but they may do so using a CAA recordkeeping requirement otherwise applicable.

The second key point is that the RCRA Subpart BB language makes no mention of the relative stringency of the rule being used to document compliance. The guidance cited above is quite clear on this point:

The regulatory language used in the revised paragraph (m) of Subpart BB does not condition the use of the CAA documentation of compliance in place of Subpart BB compliance on the relative stringency of the rule being used to document compliance. No mention is made of relative stringency in the rule language. That is, Subpart BB paragraph (m) does not require that the alternative CAA equipment leak rule be equivalent to or more stringent than the control requirements of Subpart BB. This type of rule language was not considered necessary or meaningful in relation to the Agency's equipment leak standards because differences in the various CAA and RCRA equipment leak rules in terms of

technical requirements and overall control performance are marginal.

To summarize, to exercise the compliance election provision of RCRA Subpart BB, the following conditions must be met (again, borrowing language from the cited guidance):

- the relevant CAA requirements must be applicable to the subpart BB equipment;
- The relevant CAA requirements must include provisions for operation, monitoring, and repair of the Subpart BB equipment;
- The relevant CAA requirements must be codified within 40 CFR part 60, 61, or 63; and
- compliance with the relevant CAA requirements must be documented in the facility operating record.”

From: Knittel, Janette

Sent: Wednesday, June 20, 2018 1:36 PM

To: DUVAL Rich <rich.duval@state.or.us>

Cc: Valdez, Heather <Valdez.Heather@epa.gov>

Subject: RE: more on CAA exemption for ORU-2

Rich, below is what Heather found re: what we said in the email below. Let me know if you want us three to talk about it, or feel free to call Heather yourself (206-553-6220).

From Heather:

I found some verification for my assumption about the exemption from BB via CAA compliance only being valid if there is equivalent protection. There is discussion to this effect in the preamble of the amendments to AA, BB, and CC for the regulatory action that put the CAA exemption into the RCRA air rules. I have added some underlines for emphasis.

61FR59938 Nov 25, 1996

Section 3004(n) of RCRA, of course, requires that EPA control emissions from (among other things) tanks, surface impoundments, and containers as may be necessary to protect human health and the environment. Some of the Clean Air Act standards, in contrast, are technology-based controls implementing the provisions of section 112(d) of the Clean Air Act. The EPA, however, has found that under some circumstances a technology-based standard may satisfy the RCRA protectiveness requirement by adequately controlling air emissions and thus adequately controlling risk or controlling risk sufficiently that the Clean Air Act section 112(f) residual risk process need not be interdicted. See 60 FR at 32593 (June 23, 1995), the preamble for final MACT standards for the secondary lead source category, and 61 FR at 17369–370 (April 19, 1996), the preamble for proposed MACT standards for hazardous waste combustion units. The EPA is finding here that where there are MACT air emission control requirements for a specific unit otherwise covered by subpart CC, the MACT requires the same technical air emission controls as would be required under subpart CC. Thus, it follows that compliance with the MACT requirements would thus afford equal protectiveness as would be achieved under subpart CC, and therefore can be considered to satisfy the RCRA protectiveness requirements. The technical requirements for the RCRA air rules in subpart CC as amended are essentially the same as

those published by the EPA under the MACT program (e.g., those in subparts OO, PP, and QQ of part 63). A unit controlled under one or the other set of requirements would achieve the same emission reduction and performance level; and the various requirements thus provide the same level of protection.

From: Knittel, Janette

Sent: Thursday, June 14, 2018 10:49 AM

To: Valdez, Heather <Valdez.Heather@epa.gov>; DUVAL Rich <rich.duval@state.or.us>

Subject: more on CAA exemption for ORU-2

Rich,

How did your conversation with CWM go yesterday? We have some more information to share regarding the CAA exemption. Heather has done more research and verified that the CAA exemption is valid for compliance with Part 264 Subpart BB only if there is equivalent protection. We can provide you with an excerpt from the preamble and other info if you want to see it. Could you please give us an explanation of how, in the case of the ORU-2, Part 61 Subpart FF is stringent enough and will cover all that Subpart BB and 264.1033 require? Of course we can talk through it if you'd like but it would help if you could reply to this email or at least put your answer in the responses to comments you're preparing.

Thanks,

Janette

Janette Knittel

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